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IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1995

JERRY BOYETT, A MINOR CHILD,
SUING BY HIS FATHER AND NEXT
FRIEND, WAYNE BOYETT,

Petitioner,

v.

LALAR TOMBERLIN, JIM HEAD,
SAMMY CARR, and CRENSHAW COUNTY
BOARD OF EDUCATION,

Defendants.

ON PETITION FOR WRIT OF CERTIORARI
To The Supreme Court of the State of Alabama

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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14 pp

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IN THE CIRCUIT COURT OF
CRENSHAW COUNTY, ALABAMA

JERRY BOYETT, a minor child suing by his father and next friend, WAYNE BOYETT,	)	
Plaintiffs,	)	CIVIL ACTION NUMBER
vs.	)	CV-93-67
LALAR TOMBERLIN, JIM HEAD, SAMMY CARR, individually and in their official capacities as Teacher, Principal, and Superintendent, respectively, and CRENSHAW COUNTY BOARD OF EDUCATION,	)	
Defendants.	)	

ORDER

This matter came before the Court on the Motion for Summary Judgment of the various defendants. Based on the matters submitted to the Court at the hearing on the motion, the Court is of the opinion that the Motion for Summary Judg-

ment is due to be and is hereby granted.

The Court grants summary judgment as to all counts of the plaintiff's Complaint seeking monetary or other damages.[1] The plaintiff has also demanded injunctive relief, or in the alternative, mandamus, to set aside the disciplinary action imposed against him and to expunge any record of the same from his permanent school record. The Court understands, and apparently the parties agree, that the plaintiff's school record contains no such notation of disciplinary action and further that there is no discipline record from this incident kept by the board of education. The demand for injunctive relief, or in the alternative, mandamus, is moot.

Having considered all materials submitted by the parties, having heard the oral arguments of counsel, and having considered the case law in Alabama noted previously, this Court now finds that there are no genuine issues of material fact and the defendants' Motion for Summary Judgment is due to be granted as a matter of law.

It is therefore ORDERED, ADJUDGED, and DECREED that the defendants are entitled to summary judgment in this matter. There being no just cause for delay, the Court Clerk is expressly directed to enter summary judgment in favor of the defendants.

DONE this the 17th day of April, 1995.

/s/H. Edward McFerrin

H. Edward McFerrin

Circuit Judge

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[1] The Court is aware of 25 cases in favor of educators and/or boards of education which have been affirmed by the Alabama Supreme Court on the

issue of personal injury claimed by a student since 1986. All 25 cases were affirmations of the lower Court's entry of summary judgment, judgment on the pleadings, or a similar motion. One, Nance v. Matthews, was an affirmation order on a 12(b)(6) motion.

Hill v. Allen, 495 So. 2d 32 (Ala. 1986);
Brown v. Covington County Board of Education, 524 So. 2d 623 (Ala. 1988);
Wynn v. Board of Education of Vestavia Hills, 508 So. 2d 1170 (Ala. 1987);
Best v. Houtz, 541 So. 2d 8 (Ala. 1989);
Vardaman v. Florence City Board of Education, 544 So. 2d 962 (Ala. 1989);
Clements v. Moncrief, 549 So. 2d 479 (Ala. 1989);
Stevens v. Chesteen, 561 So. 2d 1100 (Ala. 1990);
Beasley v. Morton, 564 So. 2d 45 (Ala. 1990);
Riggs v. Bell, 564 So. 2d 882 (Ala. 1990);
Green v. Bester, 568 So. 2d 792 (Ala. 1990);
B.M. v. Crosby, 581 So. 2d 842 (Ala. 1991);
W.L.O. v. Smith, 585 So. 2d 22 (Ala. 1991);
Cason v. Oliver, 604 So. 2d 760 (Ala. 1992);
Coyle v. Harper, 622 So. 2d 302 (Ala. 1993);
Kroger v. Davis, 622 So. 2d 303 (Ala. 1993);
Nance v. Matthews, 622 So. 2d 297 (Ala. 1993);
Deal v. Hill, 619 So. 2d 1347 (Ala. 1993);
Lennon v. Peterson, 624 So. 2d 171 (Ala. 1993);
Hayes v. Walters, 628 So. 2d 558 (Ala. 1993);
Brown v. Jefferson County Board of Education, Released April 8, 1994;
Faulkner v. Patterson, Released October 28, 1994;
D.A.C. v. Thrasher, Released January 13, 1995;
Byrd v. Sullivan, Released February 24, 1995;

Danielowicz v. City of Florence Board of Education, Released March 10, 1995;

LSB v. Howard, Released March 17, 1995.

DEC 01 1995

ALABAMA
COURT OF CIVIL APPEALS

OCTOBER TERM, 1995-96

2940975

Jerry Boyett, a minor child,
suing by his father and next friend,
Wayne Boyett
v.
Lalar Tomberlin, et al.

Appeal from Crenshaw Circuit Court

(CV-93-67)

CRAWLEY, Judge

Jerry Boyett (the student), a senior at Luverne High School, sued Lalar Tomberlin (the teacher), Jim Head (the principal), Sammy Carr (the superintendent), and the county board of education (the board), after he was disciplined for leaving class, without permission, to go to the restroom.

The student sought compensatory and punitive damages for state law tort claims involving "pain and suffering, embarrassment, humiliation, and invasion of privacy," as well as injunctive relief, or, in the alternative, a writ of mandamus to set aside the disciplinary action and to expunge any record of it from his permanent school record. He also alleged a vio-

lation of his rights under the Fourteenth Amendment to the United States Constitution and requested relief pursuant to 42 U.S.C. § 1983. The trial court entered summary judgments in favor of all defendants, and the student appealed. The Alabama Supreme Court transferred the cause to this court pursuant to Ala. Code 1975, § 12-2-7(6).

The student alleged that on September 13, 1993, while he was enrolled in the teacher's class at Luverne High School, he was suffering from diarrhea; that at the beginning of class, he asked the teacher for permission to go to the restroom; that the teacher refused to give him permission; that five minutes later he renewed his request; and that upon receiving a second denial of his request, he left the classroom, without permission, and went to the restroom. The principal imposed a disciplinary sanction of 10 days' detention, which meant that the student was required to read or study each day for 10 days while other students had a 15-minute recess.

The teacher filed the following affidavit:

> "On September 13, 1993, in my 7th period class [the student] stood up and announced in a loud voice, almost immediately after the bell rang to begin class, that (quoting to the best of my recollection): 'I have got to go to the bathroom and this tea has got to come out.' He said nothing about diarrhea. The first time I heard anything about diarrhea was when I read the complaint against me, which was filed on November 16, 1993.
>
> "When [the student] did this, the facts I had before me were as follows:

"1. [The student] had been in my 6th period class immediately prior to this, where he exhibited no signs of discomfort.

"2. During my 6th period class, [the student] . . . did not request to go to the bathroom. He could have gone to the bathroom without any affect on his grades, because he was not getting a grade for this 6th period class. Instead of acting sick, he acted, in my opinion, in a disruptive manner and in an attempt to get attention. Towards the end of class, he popped a rubberband on some kind of notebook, making a sound . . . like a firecracker. All of the students stopped and looked at him. He said 'Why are y'all looking at me?'

"3. [The student] walked right by the bathroom when changing from my 6th period class to my 7th period class.

"4. [The student] arrived in my 7th period class with approximately 3 minutes to spare. He spent this time chatting with another student, whom I understand to be his girlfriend.

"5. [The student] was disruptive and disrespectful at the time he asked to leave the classroom. He was a disruptive student in my classroom at Luverne High School during his senior year.

"6. [The student] was interrupting my classroom when he stood up in class and made his an-

nouncement. Students in my classroom know that they can quietly approach me with a request to go to the bathroom and then leave the classroom. [The student's] loud interruption was not in keeping with this policy.

"I made a decision based on the above facts not to honor [the student's] request to go to the bathroom. Given the theatrical nature of his request, I felt that allowing such request would affect my ability to educate my students and control my classroom."

In Byrd v. Sullivan, 657 So. 2d 830 (Ala. 1995), a recent case involving a student's claims against a school principal and a county board of education alleging negligence and invasion of privacy, our Supreme Court reiterated the following long-standing principles:

"Article I, § 14, Ala. Const. (1901), provides that the State of Alabama shall not be made a defendant 'in any court of law or equity'; this is the constitutional basis for the doctrine of sovereign immunity. County boards of education, as local agencies of the State, partake of this immunity. Hutt v. Etowah County Bd. of Educ., 454 So. 2d 973, 974 (Ala. 1984). An individual who, while acting as a State agent, engages in the exercise of a discretionary function may also be entitled to qualified immunity. Nance v. Matthews, 622 So. 2d 297 (Ala. 1993); see also Faulkner v. Patterson, 650 So. 2d 873 (Ala. 1994).

'Discretionary acts' have been defined as

> '[t]hose acts [as to which] there is no hard and fast rule as to course of conduct that one must or must not take . . . [;] [those requiring] exercise in judgment and choice and [involving] what is just and proper under the circumstances.'

Black's Law Dictionary 467 (6th ed. 1990); see also Smith v. Arnold, 564 So. 2d 873, 876 (Ala. 1990); Nance v. Matthews, supra."

Byrd v. Sullivan, 657 So. 2d at 832-33 (brackets added by the court in Byrd). See also Bonwell v. Bobo, 659 So. 2d 98, 101 (Ala. 1995).

The student argues that the teacher was not engaged in the exercise of a discretionary function because, he claims, a teacher has no discretion to refuse a student's request to go to the restroom. He maintains that "[w]hen the child needs to use the bathroom, there is no conceivable justification in denying him that need." Of course, that argument begs the question, which, for the classroom teacher, is: does the student genuinely need to use the restroom, or is he seeking to get out of class for another reason? A teacher's resolution of that question necessarily involves an exercise in judgment and choice. It is the epitome of a discretionary function. The student's medical expert recognized as much on cross-examination:

> "Q. My question is: A teacher has to make a discretionary call in a situation like what happened at Luverne High School on September 13, 1993, that

is, to decide whether to interrupt the class, allow a student to leave or not allow a student to leave. Is that a fair statement?

"A. That's a fair statement."

In Byrd v. Sullivan, our Supreme Court observed:

> "[T]hese are the types of decisions made by teachers, principals, and other school personnel every day, using their best judgment and evaluation of the circumstances."

657 So. 2d at 833. The teacher was entitled to immunity when she exercised her discretionary authority to refuse the student's request to leave the classroom. Likewise, when the principal determined what discipline should be imposed on the student for leaving the classroom without permission, and the superintendent upheld that disciplinary sanction, those administrators were also exercising discretionary functions, for which they have immunity. As to the state law claims, the summary judgments were proper under the doctrine of discretionary immunity.

"To state a claim under § 1983, the plaintiff must allege facts constituting a deprivation of a constitutional right, under color of state law." Bonwell v. Bobo, 659 So. 2d at 102. Furthermore, in order to recover against a teacher or a school administrator under § 1983, a student must establish not only that he or she was deprived of a constitutional right, but also that the person who deprived him or her of that right did so in bad faith or with deliberate indifference to his or her rights. Id. Relying on Bonwell, the student claims that he was denied

"a liberty interest in his bodily integrity," as well as a constitutional right to "privacy and freedom from humiliation and embarrassment."

In Bonwell, the Alabama Supreme Court held that students who had been sexually molested by a teacher had a § 1983 claim for violation of their substantive due process rights to bodily integrity. The facts of this case are a far cry from those in Bonwell. The Due Process Clause of the Fourteenth Amendment simply does not guarantee a student the right to be excused from a classroom upon demand, even if the asserted reason is to use the toilet. In this case, the student neither showed the deprivation of a constitutional right nor established bad faith or deliberate indifference on the part of the teacher and the administrators. The trial court properly entered the summary judgment as to the student's § 1983 claim.

The student's claim for injunctive relief or for a writ of mandamus to expunge any record of this disciplinary proceeding from school records was also correctly denied. The principal's affidavit states that the disciplinary action against the student is not now and never was mentioned in the student's permanent record. The evidence in this case indicates that the disciplinary form was destroyed at the end of the student's senior year. The student does not dispute that evidence. Accordingly, there was no basis for injunctive relief.

The judgment of the trial court is affirmed.

AFFIRMED.

Robertson, P.J., and Thigpen, Yates, and Monroe, JJ., concur.

OFFICE OF
CLERK OF THE COURT OF CIVIL APPEALS
STATE OF ALABAMA
MONTGOMERY

Circuit Court No. CV 93-67
January 12, 1996
RE: 2940975

JERRY BOYETT, a minor child, suing by his father and next friend, WAYNE BOYETT, Appellant	vs.	LALAR TOMBERLIN, et al., Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Court of Civil Appeals:

Application for rehearing overruled. No opinion written on rehearing.

/s/ John H. Wilkerson, Jr.
Clerk, Court of Civil
Appeals of Alabama

MAILING ADDRESS:
300 Dexter Avenue
Montgomery, Alabama 36104-3741

IN THE SUPREME COURT OF ALABAMA

May 31, 1996

1950668

Ex parte Jerry Boyett, a minor child suing by his father and next friend, Wayne Boyett. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Jerry Boyett, a minor child suing by his father and next friend, Wayne Boyett v. Lalar Tomberlin, et al.) (2940975) (Crenshaw: CV-93-67)

CERTIFICATE OF JUDGMENT
Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

COOK, J. - Hooper, CJ., Maddox, Shores and Kennedy, JJ., concur.